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Report of the United Nations High Commissioner for Human Rights*

Summary

The present report, submitted pursuant to General Assembly resolution 48/141, offers a human rights analysis of land-related issues, in particular on land management, States' obligations and other actors' responsibilities. It also lays out the criteria that States should apply when considering land and human rights issues in relation to specific groups and existing human rights.

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I. Introduction

1. Human rights-related land issues have become areas of growing concern in both the developing and developed world. The global rush for land has had an impact on a range of fundamental human rights and forced Governments to put land issues at the top of their agendas. Growing concerns about food insecurity, climate change, unsustainable use of natural resources and rapid urbanization have brought renewed attention to how land is distributed, used, controlled and managed. Pressures on land are diverse and arise in a long historical context combined with ever increasing pressure on limited resources.

2. People around the world depend on access to land and natural resources for survival and their livelihood. Population growth, the loss of arable lands due to degradation and production of "cash crops" or biofuels have led to intensive competition for agricultural land.[1] While reliable and comprehensive data are difficult to obtain, some sources indicate that large-scale agricultural land acquisitions by national and foreign investors saw millions of hectares of land sold or leased between 2000 and 2010, primarily in developing countries in Africa, Asia and Latin America.[2]

3. The above situation has particularly adverse implications for the human rights of women. Social structures that foster gender discrimination, and deeply entrenched power differentials, give women less access to, control over and use of land and other productive resources.

4. Environmental pressures and concerns can often lead to conflict between those who depend on land for subsistence and other stakeholders who may want to use natural resources for other purposes, including for profit. The failure to prevent and mitigate environmental degradation further limits access to land, especially for people living in marginal areas, such as arid and semi-arid areas or areas susceptible to flooding or erosion caused by rising sea levels.

5. According to estimates, between 280 million and 300 million people worldwide have been affected by development-related displacement over the past 20 years;[3] in other words, every year 15 million people are forced to leave their homes and land to make way for large development and business projects,[4] such as the construction of hydroelectric dams, mines and oil and gas installations, or luxury resorts for tourism. In urban areas, evictions have continued in the name of city "beautification" and major sports events.

6. Rural and urban migration also puts pressure on access to urban land. The mismanagement of urban planning is often responsible for both raising the price of land and socioeconomic polarization, including from urban gentrification processes. Informal settlers are often pushed out into slums, where basic infrastructure is lacking and living conditions are poor, with lack of access to energy, safe drinking water and sanitation.

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[1] Food and Agriculture Organization of the United Nations and Earthscan, "The State of the World's Land and Water Resources for Food and Agricultures: Managing systems at risk" 2011, available from www.fao.org/nr/solaw/solaw-home/en/.

[2] See the Land Matrix Project at http://landmatrix.org/.

[3] Leilani Farha, *Forced Evictions: Global Crisis, Global Solutions* (Nairobi, United Nations Human Settlements Programme (UN Habitat), 2011) (available from www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3187), p. 17.

[4] Ibid.

7. Land issues are factors in emergency situations, including armed conflict and natural disasters. At the end of 2012, it was estimated that 45.2 million people had been forcibly displaced.[5] Weak land governance can increase the impact of disasters and the risk of conflict.[6]

8. Land-related decisions can directly or indirectly affect a variety of civil and political rights. The right to life may be threatened when the pollution of land puts local communities at risk of ill health and higher rates of mortality. Human rights defenders working on land issues often face targeted threats to their life by violent attacks, and routinely encounter harassment.

9. The rights to take part in cultural life, freedom of religion and freedom of opinion, expression, assembly and association are crucial for free, active and meaningful participation in land-related decision-making. Arbitrary detention or the use of excessive force against landless movements who occupy land in a non-violent manner, informal settlers who protest against evictions or peasants who demand more equitable distribution of land violate these rights. Violations can also be committed when access is denied to places used for cultural festivals, worship and spiritual rituals. Rights violations can be further aggravated when there are no independent or functioning dispute resolution or grievance mechanisms that can identify effective remedies for land claims and against unlawful actions by State or private actors.

10. Economic and social rights, including the rights to food, housing, water, health, work and an adequate standard of living, are directly affected by land management decisions. These decisions can either ensure the enjoyment of these rights or lead to the weakening of social safety nets, and thereby hamper the realization of these rights. Access to land and to productive resources can constitute the appropriate means to ensure the realization of the right to adequate food. By contrast, the right to adequate food may be violated whenever access to or use of productive land is restricted for those whose access to food depends on food production from land, such as smallholder and landless farmers, herders, fishers and indigenous peoples.

11. In rural and peri-urban areas, land is a determinant factor for realizing the right to adequate housing. Lack of security of land tenure and forced evictions from land put the enjoyment of that right at risk. Health-related rights and conditions can also be at risk when evictions, displacements and relocations deprive affected people of access to health facilities and services.[7] Pollution of land by the dumping of toxic wastes can also undermine the enjoyment of the right to health by residents, as can poor land management the right to water and sanitation.

II. Land issues from a human rights perspective

A. Human rights standards and obligations

12. To date, international human rights law has not provided for a universal "human right to land". Some international instruments make reference to land; for instance, article 11, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights and

[5] Office of the United Nations High Commissioner for Refugees (UNHCR), *Displacement, the new 21st century challenge. UNHCR Global Trends 2012* (Geneva, 2013) (available from www.unhcr.org/51bacb0f9.html), p. 1.

[6] UN Habitat, *Land and Natural Disasters: Guidance for Practitioners* (Nairobi, 2010).

[7] Farha, *Forced Evictions* (see footnote 3), p. 68.

article 14, paragraph 2 (g) of the Convention on the Elimination of All Forms of Discrimination against Women make explicit reference to land in relation to the right to food and the rights of rural women respectively. The regulation of most land issues is left to national law.[8] In some countries, national law recognizes a right to land. In national jurisdictions, people may enjoy various land and property rights, including to have access to, use, control and transfer land and property. Most countries provide for some form of land registration system. On the national and local levels, land tenure systems are made up of multiple layers of rules, laws, customs, traditions, perceptions and regulations. In many instances, however, national laws and court decisions run counter to human rights obligations. In this context, considering land issues from a human rights perspective allows for the clarification of obligations, but also for the achievement of development and humanitarian goals, poverty eradication and the realization of human rights.

13. Regional human rights mechanisms also make reference to the linkages between human rights, land and property. Regional mechanisms such as the African Commission on Human and Peoples' Rights, the Inter-American Court of Human Rights, the European Court of Human Rights and the European Committee of Social Rights have all addressed land issues.[9]

14. United Nations human rights treaty monitoring bodies and special procedures mandate holders have addressed land issues in relation to non-discrimination and the rights to adequate housing, food, water, health, sanitation, work, freedom of opinion and expression, the rights of indigenous peoples and self-determination, as well as the right to participate in public affairs and cultural life.

B. States' obligations with regard to land issues

15. States, as primary duty-bearers, have the obligation to respect, protect and fulfil the human rights of people under its jurisdiction.

16. National laws, policies and customs determine how land is used, controlled and transferred. Statutory recognition of individual land titles therefore strengthens security of tenure. When statutory law fails to recognize tenure rights exercised as customary or subsidiary tenure, however, individual titling may in fact undermine access and control over land by people whose livelihood depends on it. Discriminatory inheritance laws, including customary rules, often undermine equitable access to land for women and girls.[10]

17. Securing national policy space for the protection of human rights in international agreements on land investments and transactions is the primary duty of the host State (an operating State of a multinational corporation). At the same time, the home State of a business enterprise (namely, the State where a multinational corporation is headquartered or incorporated) also has certain responsibilities for regulating the conduct of its enterprises throughout its global operations. Guideline 3.2 of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, adopted by the States

[8] Olivier De Schutter, "The emerging human right to land", *International Community Law Review*, vol. 12, 2010, p. 305.

[9] See, for example, African Commission on Human and Peoples' Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 4 February 2010; Inter-American Court of Human Rights, Mayagna (Sumo) Awas Tingni v. Nicaragua, 31 Aug. 2001; European Court of Human Rights, Kehaya and Others v. Bulgaria, 12 January 2006; and European Committee of Social Rights, International Federation of Human Rights (FIDH) v. Belgium, 21 March 2012.

[10] A/65/281, para. 30.

Members of the Food and Agriculture Organization of the United Nations (FAO), suggests that "where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights." Treaty bodies increasingly interpret human rights instruments as having implications for home States of multinational corporations.[11]

18. The Special Rapporteur on the right to food has proposed a set of minimum principles and measures to address human rights challenges in the context of large-scale land acquisition and leases.[12] He has also made a number of recommendations on access to land and security of tenure as essential for the enjoyment of the right to food.[13]

19. Article 1, paragraph 3 of the Charter of the United Nations requires Member States to take joint and separate action to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". Member States are also required to ensure that the conduct of multilateral organizations of which they are members, including international financial or trade organizations, avoid any negative impact on human rights related to land, and should adopt policies towards the realization of such rights.

20. The application of international human rights law to land issues provides guidance to States and others actors on obligations in this context. Some of the main elements are explained below.

1. Self-determination

21. The rights to self-determination and to freedom of movement may be violated when those living under occupation or marginalized peoples are not allowed to dispose freely of their natural resources, including land, particularly when such resources are their means of subsistence. These rights are also contravened when restrictions on the voluntary return of displaced persons to their original homes are upheld without legitimate justification and appropriate procedures.

22. Article 1 of the International Covenant on Economic and Social Rights and the International Covenant on Civil and Political Rights states that all peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, dispose freely of their land and resources, and in no case should a people be deprived of its own means of subsistence, including those deriving from land.[14]

2. Non-discrimination and equality

23. The principles of non-discrimination and equality are fundamental to the exercise and enjoyment of human rights, including those relating to access to, use of and control over land.

24. In international human rights law, discrimination is understood as any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal

[11] CCPR/C/DEU/CO/6, para.16.
[12] See A/HRC/13/33/Add.2.
[13] See A/65/281.
[14] See also Committee on the Elimination of Racial Discrimination general recommendation No. 21.

footing, of human rights.[15] No one may be subjected to de jure or de facto discrimination in recognition, enjoyment or exercise of human rights based on grounds of race, colour, decent, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. This applies to land issues.[16]

25. Moreover, all are equal before the law and are entitled without any discrimination to equal protection of the law, including all matters referring to land.[17]

26. The persistence of discrimination, in particular discrimination that has deep social roots, including in caste-based distinctions and sexism, has, however, led to a serious denial of access to and control over land. Certain human rights instruments specifically prohibit discrimination in relation to property and housing.

27. Recognizing that preventing formal discrimination will not necessarily change the situation of the persons and groups affected, the Committee on Economic, Social and Cultural Rights, in its general comment No. 20, observed that preventing substantive discrimination required paying sufficient attention to groups of individuals who suffer historical and persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. This requires States to take necessary steps to prevent, diminish and eliminate the conditions and attitudes, which cause or perpetuate substantive or de facto discrimination.

3. Right to life

28. Article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights guarantee every human the inherent right to life, and protect against the arbitrary deprivation of life. In this context, for the full enjoyment of this right, no one should be deprived of his or her own means of subsistence, including those deriving from land.[18] In its general comment No. 6, the Human Rights Committee stated that to fulfil article 6 of the Covenant, it would be desirable for States parties to take all possible measures to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.[19]

4. Right to an adequate standard of living

29. Everyone has the right to an adequate standard of living and for his or her family, including food, housing and water, and to the continuous improvement of living conditions.

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[15] Committee on Economic, Social and Cultural Rights, general comment No.20 (E/C.12/GC/20) para.7.

[16] See Universal Declaration of Human Rights, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2; International Covenant on Civil and Political Rights, arts. 2(1) and 3; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1(1); and Convention on the Rights of Persons with Disabilities, art. 5 (2). See also Human Rights Committee general comment No. 28, Committee on Economic, Social and Cultural Rights general comments No. 20, para. 25, and No. 15, para. 16 (c), and guideline 8 of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

[17] See Universal Declaration of Human Rights, art. 7; International Covenant on Civil and Political Rights, art. 26; and Convention on the Elimination of All Forms of Discrimination against Women, art. 15. With regard to the rights of minorities, see Human Rights Committee general comment No. 23, para. 7. With regard to the rights of women, see Convention on the Elimination of All Forms of Discrimination against Women, arts. 15, paras. 2 and 4.

[18] Inter-American Court of Human Rights, case of the Yakye Axa Indigenous Community v. Paraguay, Judgement of 17 June 2005. With regard to forced eviction, see Committee on Economic, Social and Cultural Rights general comment No. 7, para. 4.

[19] HRI/GEN/1/Rev.9 (Vol. I), p. 177, para.5.

In certain circumstances, land may be an essential element for the improvement of living conditions.[20]

5. Freedom from hunger

30. The "fundamental right of everyone to be free from hunger" is enshrined in article 11, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights. In order to enable everyone to the full enjoyment of this right, States are to take, individually and through international cooperation, the measures to improve the methods of production, conservation and distribution of food, including by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.

6. Right to effective judicial remedy

31. Everyone has the right to an effective remedy by the competent national tribunals for acts violating fundamental and human rights recognized by national or international law, including those related to land.[21] This is particularly important in the event of conflicting land claims and in cases of eviction and displacement.

7. Freedom of opinion, expression, assembly and association

32. Everyone has the right to freedom of opinion and expression, peaceful assembly and association. This includes land issues.[22]

8. Right to take part in public affairs

33. Everyone has the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, including the formulation of government policies and decisions including those relevant to land and their implementation.[23]

34. On a basis of equality of men and women, women have the right to participate in the elaboration and implementation of development planning at all levels, including those relevant to land.[24]

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[20] See Universal Declaration of Human Rights, art. 25, and International Covenant on Economic, Social and Cultural Rights, art. 11.1. See also Committee on Economic, Social and Cultural Rights general comments No. 4, para. 8, No. 12, para. 12, No. 14, para. 27, and No. 15, para. 16 (d).

[21] See Universal Declaration of Human Rights, art. 8, International Covenant on Civil and Political Rights, art. 2, para. 3, and International Convention on the Elimination of All Forms of Racial Discrimination, art. 6.

[22] See Universal Declaration of Human Rights, arts. 19 and 20, International Covenant on Civil and Political Rights, arts. 19 – 21, International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (viii) and (ix), and Committee on Economic, Social and Cultural Rights general comment No. 4, para. 9.

[23] See Universal Declaration of Human Rights, art. 21, International Covenant on Civil and Political Rights, art. 25 (a), International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (c), Convention on the Elimination of All Forms of Discrimination against Women, art. 7, and Convention on the Rights of Persons with Disabilities, art. 29.

[24] See Convention on the Elimination of All Forms of Discrimination against Women art. 14, para. 2 (a), read in conjunction with art. 14, para. 2 (g).

C. Obligations towards specific groups

1. Women

35. Article 14, paragraph 2 of the Convention on the Elimination of All Forms of Discrimination against Women requires States parties to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development, including the right to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.

36. The human rights treaty bodies of the United Nations have repeatedly affirmed women's equal rights in relation to their access to, use of and control over land. The Committee on Economic, Social and Cultural Rights, in its general comment No. 16, stated that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to have access to necessary resources to do so. In its general recommendation No. 21, the Committee on the Elimination of Discrimination against Women further underlines that, with regard to equality in marriage and family relations concerning land, in countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.

37. Denial of legal autonomy is often an obstacle for women's control over land. In its general recommendation No. 21, the Committee on the Elimination of Discrimination against Women affirmed that, when a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or male relative's concurrence or guarantee, she is denied legal autonomy. Based on this observation, the Committee required that all States parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation on relevant articles of the Convention and enact and enforce legislation necessary to comply with the Convention. The Human Rights Committee, in its general comment No. 28, stated that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground.

38. The Human Rights Committee, the Committee on the Elimination of Discrimination against Women and FAO have all highlighted the need for States to take steps to ensure equality of rights and responsibilities of spouses with regard to marriage,[25] during marriage and at its dissolution.[26] In this regard, States are to ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.[27]

39. In recent years, many countries have repealed laws identifying the husband as the head of household and limiting the capacity of women to administer family property. In practice, the "head of household" concept closely parallels the notion of marital power.

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[25] "Legislation in relation to marital property regime will be effective only if any "marital power" provisions which may undermine women's position of equality within the marriage are also removed." FAO, "Gender and law: women's rights in agriculture", FAO Legislative Study No. 76, revised edition, Rome, 2007, p. 21.

[26] International Covenant on Civil and Political Rights, art. 23, para. 4.

[27] Convention on the Elimination of All Forms of Discrimination against Women, arts. 15, para. 2 and 16, para. 1 (c) and (h).

although cloaked in more gender-neutral language. While women are sometimes deemed to be the head of their household, this is most often the case when no man is present. As such, the effect of the "head of household" concept has been one of bias against women. As pointed out by FAO, "while land reform programmes adopting the household as the beneficiary unit and issuing land titles to the (male) household head may still provide female household members with access to land, they may undermine their bargaining power – and thus their social position."[28]

40. It is therefore crucial that the equal right of men and women to the enjoyment of all human rights, including those relevant to land, is protected and promoted.[29] Of particular importance, States should take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. In this context, States are to ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, including land.[30]

2. Children

41. Children are often dependent on their caregivers in their access to basic needs, such as health services, education, adequate food, safe water and sanitation, and are thus vulnerable owing to loss of livelihood by their caregivers in the event of insecure tenure or loss of access to land. Furthermore, children, especially girls, adopted children or children born out of wedlock are often discriminated against in inheriting and having access to family land. Even when land rights are not in themselves discriminatory against female, adopted children or children born out of wedlock, lack of access to justice is often a crucial impediment to being able to claim an inheritance, or land claims may be settled using informal legal systems which do not necessarily protect their rights.[31] In its general comment No. 11, the Committee on the Rights of the Child elaborated further on the rights of indigenous children, emphasizing the cultural significance of land:

> In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture. States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible.[32]

3. Indigenous peoples

42. International human rights law provides for specific rights of Indigenous peoples and their relationship with their ancestral lands or territories. Articles 7, paragraph 1 and 13

[28] FAO, Gender and Law (see footnote 25), p. 21.

[29] See International Covenant on Economic, Social and Cultural Rights, art. 3, International Covenant on Civil and Political Rights, art. 3, Convention on the Elimination of All Forms of Discrimination against Women, art. 2 (a), Commission on Human Rights resolutions 2000/13, 2001/34, 2003/22, 2004/21 and 2005/25, Subcommission on the Promotion and Protection of Human Rights resolutions 1997/19 and 1998/15, and resolution 42/1 of the Commission on the Status of Women. See also Committee on Economic, Social and Cultural Rights general comments No. 16, para. 28, and No. 12, para. 26.

[30] See Convention on the Elimination of All Forms of Discrimination against Women, art. 16, para. 1 (c) and (h), Committee on the Elimination of Discrimination against Women general comments No. 21 and No. 27, and general recommendation No. 21, paras. 25-27.

[31] United Nations Children's Fund, UN-Women and United Nations Development Programme, *Informal Justice Systems: Charting a Course for Human Rights-based Engagement*, New York, September 2012.

[32] CRC/C/GC/11, para. 35.

to 19 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) and articles 8 (b), 19, 25 to 30 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples articulate land rights in relation to indigenous peoples, particularly by addressing the collective aspects of these rights. Article 26, paragraph 1 of the Declaration acknowledges indigenous peoples' right to the lands, territories and resources they have traditionally owned, occupied or otherwise used, while article 26, paragraph 2 refers to the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use. Article 26, paragraph 3 requires States to give legal recognition and protection to these lands, territories and resources. Article 27 furthermore requires States to establish and implement processes recognizing and adjudicating indigenous peoples' rights in relation to their lands, territories and resources.

43. Indigenous peoples' rights in connection with lands, territories and resources have also been incorporated into a number of international environmental instruments. These instruments include the provisions of article 8 (j) of the Convention on Biological Diversity, affirming indigenous peoples' rights to their traditional knowledge.

44. Indigenous peoples enjoy a right to their ancestral lands, territories and resources and a right to take part in decision-making affecting these lands.[33] Regional human rights courts have recognized the right to land of other groups such as tribal communities, who have a special relationship to land similar to that of indigenous peoples.

45. Historically, indigenous peoples have typically suffered from human rights violations in land-related disputes. Their way of life is closely linked to traditional relationships with ancestral lands, territories and natural resources. They depend on their ancestral land for cultural survival, as well as for fishing, hunting, gathering activities and cultural festivals or spiritual rituals. Deprivation of access to their land can mean denial of their very identity and existence as a people.[34]

46. Indigenous peoples have a right to the lands, territories and resources that they have traditionally owned, occupied, used or acquired. States have correlative duties not to remove indigenous peoples from their land, to give legal recognition and protection to indigenous peoples' lands, territories and resources, and to protect them from interference and prejudicial action from third parties, including businesses.[35] This recognition should also include the concept of "free prior and informed consent", a principle whereby a community has the right to withhold its consent to proposed projects that may affect the lands it customarily owns, occupies or otherwise uses.

4. Human rights defenders

47. Human rights defenders working on land issues who advocate for land reforms, oppose large-scale development projects and defend the rights of victims, including members of peasants' movements and human rights lawyers, are often subjected to stigmatization, criminalization or exceptional threats to their physical integrity and to that of their family members. Their work makes them a target for adversaries of equitable

[33] See ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples.

[34] A/HRC/4/32, para. 49. See also Committee on Economic, Social and Cultural Rights general comment No. 21, para. 36.

[35] United Nations Declaration on the Rights of Indigenous Peoples arts. 10, 26 – 30 and 32.

access to land, vested interests of business enterprises, armed groups and corrupt State officials.[37]

48. The criminalization of social protests linked to land issues is a source of concern, given that it can be used unduly to restrict the rights to freedom of opinion and expression and of peaceful assembly, which are not only key public freedoms but also essential tools for defenders to claim other rights.

49. In addition, women human rights defenders advocating for equal access of women to land often face violations that may take a gender-specific form, including sexual violence, allegations of witchcraft and sorcery, stigmatization, ostracism and harassment. Women may experience these violations within their own family and community as they challenge discriminatory customs, perceptions and practices.[38] Single women, widows, divorced women, older women, sexual minority women and those living in non-traditional arrangements are particularly vulnerable to violence and abuse both as human rights defender on land issues and as claimants of rights related to land and property issues. The Declaration on Human Rights Defenders should therefore be understood as covering anyone who, individually or with others, acts to promote or protect human rights, including those relevant to land issues.

5. Internally displaced persons, refugees, returnees and secondary occupants

50. Internally displaced persons, refugees, returnees and secondary occupants, as well as host communities of internally displaced persons or refugee camps, encounter various challenges in land-related rights. Returning internally displaced persons and refugees may be denied restitution of their land and property, while secondary occupants may face eviction or relocation upon the return of original owners.[39]

51. According to principle 14.2 of the Principles on Housing and Property Restitution for Refugees and Displaced Persons, States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals, including the elderly, single female heads of households, separated and unaccompanied children and the disabled should be given particular attention.[40]

52. Standards relevant to refugees and displaced persons recognize the housing, and property rights of refugees and displaced persons, underlining that securing these rights is essential to long-term peace, stability, economic development and justice. The Convention relating to the Status of Refugees includes provisions on the rights of refugees to residence, property, housing and freedom of movement that are applicable to land. Moreover, the Guiding Principles on Internal Displacement[41] and the Principles on Housing and Property Restitution for Refugees and Displaced Persons offer guidance on measures to be taken to comply with the rights of displaced persons and refugees to the restitution of their housing, property and land.

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[37] See A/68/262.

[38] A/HRC/19/55, paras. 123-126. See also A/HRC/4/37, para. 45.

[39] Office for the Coordination of Humanitarian Affairs, Humanitarian Update, Volume VI, Issue V, May 2004, p. 4. See also A/67/931 and UN Habitat, *Land and Property in Disaster and Conflict*, Nairobi, 2009.

[40] E/CN.4/Sub.2/2005/17, annex.

[41] E/CN.4/1998/53/Add.2, annex.

6. Smallholder farmers, pastoralists and artisanal fishers, including those who are landless

53. Smallholder farmers, pastoralists and artisanal fishers, including those who are landless, rely on access to land, including agricultural and farmland, grazing land and fishing grounds, for their survival and livelihood. An increasing number of them face threats and obstacles to access. Their exercise of customary, temporary and/or subsidiary tenure of land is often disregarded when land is acquired by large landowners or industries, commodified or expropriated.[41]

D. Responsibilities of business enterprises

54. Business enterprises, which are often influential actors in the governance of land and other natural resources, including through market mechanisms, have human rights-related responsibilities. National and transnational companies involved in land deals, investments and extractive and other activities involving the acquisition, use or alteration of lands bear a responsibility not to infringe on the rights of other users and owners through their activities, and to address any adverse impact arising as a result of their actions.

55. The responsibilities of business enterprises have been elaborated in the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution 17/4. Business enterprises as specialized organs of society are at all times to comply with applicable laws; however, they also have an independent responsibility to respect all internationally recognized human rights, going beyond compliance with national law, where necessary. To meet this responsibility, business enterprises should formulate policy statements and frameworks to respect rights, and undertake at the earliest possible stage systematic "human rights due diligence".[42]

56. Business enterprises should also establish effective project-level operational grievance mechanisms for potentially affected stakeholders to raise concerns regarding impacts on their rights throughout the lifespan of a project.[43] For these projects, business enterprises are expected to comply with additional standards, including ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, and to verify that free, prior and informed consent has been obtained where relevant.[44]

57. The industrial exploitation of natural resources often leads to the degradation and pollution of land and water sources, thereby affecting the livelihoods and health of local communities. Since the world food crisis in 2008, agricultural companies have been rushing to acquire land on a large scale in order to supply agricultural products to wealthier food-importing countries, thus often contributing to a deepening of the food crisis in host countries, including by exacerbating hunger among local communities. Other negative effects include the dumping of toxic waste, which contaminates soil and water and poses severe health risks for neighbouring residents.

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[41] See A/65/281, paras. 14 and 24-26, and A/HRC/19/75, paras. 11-21.
[42] See A/HRC/17/31, annex.
[43] Ibid., principles 29 and 31.
[44] See A/68/279, para. 19.

E. Applicable international humanitarian law, international criminal law and international refugee law

58. In situations of armed conflict, both international humanitarian law and international criminal law are applicable, in addition to international human rights law,[45] providing a channel for pursuing individual criminal accountability for war crimes, crimes against humanity and the crime of genocide. Armed conflicts often cause the displacement of people and the destruction of land and other land-related resources and facilities, such as water sources, housing, livestock and crops. Furthermore, occupying powers may affect or restrict land tenure of residents in occupied areas. These acts undermine people's livelihoods, and some of them may constitute war crimes; for example, under article 8 (2) of the Rome Statute, the acts considered war crimes include extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; unlawful deportation or transfer; intentionally launching an attack in the knowledge that such attack will cause damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; and attacking or bombarding, by whatever means, towns, villages, dwellings or buildings that are undefended and not military objectives.

59. Furthermore, international humanitarian law forbids all acts aimed at attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works for the purpose of denying sustenance value to the civilian population or to the adverse party.[46]

60. In situations of occupation, international humanitarian law provides that, inter alia, lands indispensable to the survival of the civilian population, including agricultural areas and drinking water installations, are not to be destroyed. Permanent changes over land and tenure are not to be imposed under this framework beyond the narrow confines of military necessity or for the benefit of the civilian population, and tenure records must be protected. Nor are members of the civilian population to be forcibly transferred out of the territories or be prevented from returning when hostilities cease, and neither are members of the population of the occupying power to be transferred into the occupied territory. Additionally, widespread, long-term and severe damage to the natural environment is prohibited, and the extensive destruction or appropriation of property may constitute "grave breaches".[47]

61. Human rights bodies have also offered guidance on the applicability of human rights standards related to land in situations of conflict, emergencies and natural disasters. In its general comment No. 15, the Committee on Economic, Social and Cultural Rights noted that, during armed conflicts, emergency situations and natural disasters, the right to water

[45] See Office of the United Nations High Commissioner for Human Rights, *International Legal Protection of Human Rights in Armed Conflict* (United Nations, New York and Geneva, 2011).

[46] Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts, art. 54; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts, art. 14.

[47] Geneva Convention relative to the Protection of Civilian Persons in Time of War, arts. 45, 49 and 147; Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts, arts. 3 (3) and 54; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts, art. 54; Regulations concerning the Laws and Customs of War on Land, art. 55; Customary international humanitarian law, rule 51.

embraces those obligations by which States parties are bound under international humanitarian law. This included the protection of objects indispensable for the survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage, and ensuring that civilians, internees and prisoners have access to adequate water.[48]

III. Moving forward with land issues

A. Applying a human rights-based approach to land issues

62. A conceptual framework based on international human rights standards and operationally directed at promoting and protecting human rights provides a basis for informed and strategic policy choices.[49] Such a human rights-based approach provides a basis to analyse inequalities, discriminatory practices and power relations in outcomes and processes. This ensures a minimum acceptable outcome in relation to land and its underlying determinants, including access to safe and sufficient drinking water or the elimination of hunger and homelessness. Human rights principles of participation, non-discrimination and accountability help to build the conditions for a legitimate process towards achieving desired outcomes.

63. Pursuing a human rights-based approach to land issues enables rights-holders to claim their rights while simultaneously enjoining duty-bearers – mainly States, but also non-State actors including business enterprises and international organizations – to comply with their obligations and responsibilities.

64. A human rights-based approach allows for an analysis of the needs of the most vulnerable and an assessment of the impact of the interventions undertaken. Policymakers are better able to target interventions and to achieve more equitable results on land issues and land management policies. In order to ensure the full enjoyment of rights related to land, duty-bearers need to set up mechanisms for participatory monitoring of the implementation of relevant laws and policies, as well as for access to justice and remedies. The application of human rights-sensitive indicators further inform this analysis, assessment and monitoring.[50]

65. Involving the rights-holders in this process enables them to assume ownership, which contributes to the sustainability of programmes, policies and strategies. This approach leads to better results in development efforts and is useful for building the capacity of prime actors on land issues, while strengthening social cohesion by securing social and political consensus in the long term.

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[48] E/C.12/2002/11, para. 22.

[49] According to the Human Rights-based Approach to Development Cooperation Towards a Common Understanding among United Nations Agencies (http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies), (1) all programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments; (2) human rights standards and principles guide all development cooperation and programming in all sectors and phases of the programming process; and (3) development cooperation contributes to the development of the capacities of duty-bearers to meet their obligations and/or of "rights-holders" to claim their rights.

[50] See www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx.

66. Applying a human rights-based approach will also have economic advantages in the long run by fostering a more equitable distribution, management and use of land and other natural resources. Secure land tenure may stimulate investments in land.

B. Securing land tenure

67. A number of United Nations organizations and experts have elaborated on the need to secure tenure of land in order to protect the rights of land-dwelling populations. Secure land tenure may stimulate investments in land. It has been shown that giving women farmers equitable access to land, credit and other assets increases productivity levels, and is thus one of the most effective ways to accelerate development and to support food security, economic growth and social welfare.[51]

68. In guideline 4.2 of its Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO notes that "States should ensure that all actions regarding tenure and its governance are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments".

69. In its Voluntary Guidelines, FAO also highlights the need for States to provide responsible governance of tenure and its administration by (a) making access to land, fisheries and forests more equitable; (b) protecting people from the arbitrary loss of their tenure rights, including through forced evictions; (c) helping to ensure that no one is subject to discrimination under laws, policies and practices; (d) leading to more transparent and participatory decision-making; (e) helping to ensure that all people are treated equally when laws are enforced; (f) helping to ensure that disputes are resolved before they degenerate into conflict; and (g) simplifying the administration of tenure, and making it more accessible and effective to all.

70. Similarly, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, has produced relevant guiding principles on security of tenure for the urban poor.[52] While the principles apply mainly to urban settings, they are also intended to cover urban and peri-urban land and, when relevant, can by extension apply to rural land. The Special Rapporteur clarified that security of tenure was to be understood as a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one's home in security, peace and dignity. It was an integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights. All persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats.[53] The principles, inter alia, stress the need to recognize and strengthen diverse tenure forms, suggest measures to improve security of tenure, recommend the prioritization of first-place solutions, as opposed to displacement, promote the consideration of the social function of property, and identify means to hold States accountable for their decisions regarding security of tenure.

71. The lack of recognition of tenure rights is sometimes used as grounds for discrimination, excluding landless people from social services and entitlements. Residents

[51] See FAO, *The State of Food and Agriculture 2010-11: Women in Agriculture: Closing the gender gap for development*, Rome, 2011.
[52] See A/HRC/25/54.
[53] Ibid., para. 5.

of informal settlements are often denied access to social security, health care and education because they are unable to register as citizens. In its general comment No. 20, the Committee on Economic, Social and Cultural Rights referred to property status – such as landownership or tenure, or lack thereof – as one of the prohibited grounds of discrimination.[54] In its general comment No. 15, the Committee observed that the enjoyment of economic, social and cultural rights, such as access to water services and protection from forced evictions, should not be made conditional on a person's land tenure status, such as living in informal settlement.[55]

IV. Conclusions and recommendations

72. **Land-related issues present a number of urgent challenges to human rights, given that land is an essential element for the realization of many of them.**

73. **Growing global concerns about food security, climate change, rapid urbanization and the unsustainable use of natural resources have all contributed to renewed attention to how land is being used, controlled and managed. The access to, use of and control over land directly affect the enjoyment of a wide range of human rights. At the same time, disputes over land are often the cause of human rights violations, conflicts and violence. The human rights dimensions of land-related issues are direct connected to development, peacebuilding and humanitarian assistance, as well as disaster prevention and recovery.**

74. **Land-related decision-making that ignores human rights standards often leads to the forcible eviction or displacement of people. In many countries, the shift to large-scale farming results in forced evictions, mass displacement and local food insecurity, which in turn have contributed to an increase in rural to urban migration and put added pressure on access to urban land and housing. Displacements are often conducted in a manner that violates the human rights of the communities concerned, compounding their already precarious situation. Some measures intended to protect the environment can also run counter to the interests and human rights of populations that depend on land for their subsistence and survival.**

75. **Guidance from the human rights normative framework and standards on land issues, including on the principles of non-discrimination, equality participation transparency and accountability, can help Member States to elaborate strategies, policies and programmes that will ensure the sustainability of the development process and the interests of rights-holders.**

76. **More specifically, States, United Nations agencies and all actors involved in land issues need to carefully consider the guidance given by human rights mechanisms, including treaty bodies in their general comments. In particular, States are encouraged to integrate the guiding principles on security of tenure for the urban poor, the basic principles and guidelines on development-based evictions and displacement[56] and the guiding principles on human rights impact assessments of trade and investment agreements[57] in their laws, policies and programmes.**

[54] E/C.12/GC/20, para. 25. See also A/HRC/25/54, para. 5.
[55] E/C.12/2002/11, para. 16 (c).
[56] A/HRC/4/18, annex I.
[57] See A/HRC/19/59/Add.5, annex.

77. **Similarly, States are encouraged to duly reflect, in conjunction with their human rights obligations, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in their laws and policies.**

78. **Special attention should be devoted to ensuring security of tenure of all segments of the population regardless of the type of tenure, and to ensuring equal rights and non-discrimination in matters relating to inheritance of land.**

79. **States should ensure due process in matters relating to conflicts on land, displacement, eviction and other land-related issues. This requirement also applies to international financial institutions and other actors dealing with land in their activities.**

80. **States should pay special attention to human rights defenders, including lawyers and community representatives, working on land and evictions, and protect them against all forms of threat and harassment.**